



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JANUARY 06, 2023

IN THE MATTER OF:

Appeal Board No. 625877

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective June 16, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to June 16, 2022 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed September 20, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for an attorney from April 1, 2021 through June 15, 2022 as a debt collection agent. Prior to April 1, 2021, she worked for the prior owner of the law practice since April 2018. The claimant's main task was to make outbound phone calls to get people to make payments on their debts. She

also was responsible for processing payments by notating the payments in the record and noting the processing fee. The claimant would do this each morning, sometimes for as long as an hour and a half, and then she would start making

phone calls. Every phone call from the claimant to a debtor was recorded, and the employer had a list of every phone call she made. As a remote employee, the claimant was responsible for recording her hours of work and submitting this information by email every Friday. The employer has a policy stating that altering, falsifying, or tampering with time records may result in disciplinary action up to and including termination of employment.

The claimant did not work a set schedule. She would receive and answer phone calls at different times outside of normal business hours. The claimant was not allowed to work more than 40 hours per week. If the claimant worked more than 40 hours, she would carry those additional hours forward and allocate them to the next week. She carried her overtime hours forward when she worked for the previous owner as well, with the previous owner's knowledge.

In an email dated June 9, 2021, with respect to the employer's not paying the claimant for Memorial Day, the claimant stated to the current owner, "I have been carrying over extra hours every week, because it's hard to get my work done in 40 hours. As you probably see, I usually show an end to my hours Friday early in the day on my email to you when I really work much later. There were 4 1/2 hours carried over which I keep track of each week. If you told me [that I would not be paid for Memorial Day] in advance, this wouldn't have happened." The owner did not reply to the claimant's email. In emailing her hours to the employer each week, the claimant did not necessarily distinguish between hours actually worked that week and hours carried over from a prior week. The owner had not asked her to report her carried-forward hours in any particular way.

For June 8, 2022, the claimant reported a half-hour of work that had been carried over from the prior week. She reported her start time as 9:30 AM. She actually started work at 10:00 AM. For June 10, 2022, the claimant reported an hour of work that had been carried over from the prior week. She reported her start time as 9:00 AM. She actually started work at 10:00 AM. In her email to the employer, she did not indicate that she was carrying forward overtime hours from the previous week.

The employer noted the discrepancy between the claimant's reported start times for June 8 and June 10, 2022, and when she started making phone calls on those days. The employer's phone records showed that she started making phone calls at 11:40 AM on June 8 and 10:31 AM on June 10. Based on these discrepancies, the owner discharged the claimant for falsifying time records. The claimant

had no prior, relevant warnings.

OPINION: The credible evidence establishes that the employer discharged the claimant because the employer believed she was falsifying her time records. Specifically, the claimant reported starting work at 9:30 AM on June 8, 2022, when she actually started work at 10:00 AM and started making phone calls at 11:40 AM, and the claimant reported starting work at 9:00 AM on June 10, 2022, when she actually started work at 10:00 AM and started making phone calls at 10:31 AM. The claimant reported hours she had not worked that week because she was carrying forward overtime from the previous week. The employer's owner was aware that the claimant carried forward her overtime hours from one week to the next, as the claimant told him so in an email a year earlier. Throughout that year, the employer never warned the claimant that carrying her overtime hours forward from one week to the next was inconsistent with the employer's policy, and the employer also never instructed the claimant to report her carried-forward hours in any particular manner. As a result, the claimant had no way of knowing that carrying her overtime hours forward into the next week could jeopardize her job. We also are not persuaded that the delay between the claimant's actual start time on these two dates and the time of her first phone calls necessarily establishes that the claimant falsified her time. Although the claimant and employer testified differently with respect to the amount of time that the claimant spent processing payments each morning, nothing in the record establishes that the claimant was engaged in any activity other than her work. The allegation of falsification of time records is speculative and without support. Accordingly, we conclude that the claimant's employment ended under non-disqualifying circumstances, and the claimant is allowed benefits.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective June 16, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by prior to June 16, 2022 cannot be used toward the establishment of a claim for benefits, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER